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4. Taxation (§ 106*)—Personal Taxation—Residence.—Plaintiff declared in open court in 1907 that he was a resident of Washington City, and notified the assessor of the district in which his farm was situated, and where he had been assessed as a resident of this state, that he was a resident of such city. Since that time he and his family resided for the greater part of the time in that city, spending only a few days at his farm. Held, that he was not a resident of this state, so as to be subject to personal taxation in 1908.

[Ed. Note.—For other cases, see Taxation, Cent. Dig. § 204; Dec. Dig. § 106.* 13 Va.-W. Va. Enc. Dig. 101; 14 id. (Supt.) 1001.]

5. Banks and Banking (§ 119*)—Relation between Depositor and Bank—"Bailment."—A general deposit in a bank creates the relation of debtor and creditor between the bank and the depositor, and, though called a deposit, it is a loan, and not a bailment.

[Ed. Note.—For other cases, see Banks and Banking, Cent. Dig. § 289; Dec. Dig. § 119.* 2 Va.-W. Va. Enc. Dig. 262.

For other definitions, see Words and Phrases, vol. 1, pp. 673-676.]

6. Taxation (§ 95*)—Nonresidents—Bank Deposits.—Under Code 1904, § 487, making all personal estate within the commonwealth and the moneys and credits of persons residing therein subject to taxation, and section 489, relating to the construction of the revenue laws, the general deposits of a nonresident's money in a bank of this state are not taxable here.

[Ed. Note.—For other cases, see Taxation, Cent. Dig. §§ 190-192; Dec. Dig. § 95.* 13 Va.-W. Va. Enc. Dig. 101, et seq.; 14 id. (Supt.) 1001.]

Judgment reversed. All the judges concur.

S. H. HAWES & CO. et al. v. WM. R. TRIGG CO. et al.

Sept. 9, 1909.

[65 S. E. 538.]

1. Assignments (§ 51*)—Equitable Assignments—Contracts to Pay.—A shipbuilding company having contracts with the federal government for the building of several vessels, by depositing the contracts in a bank with power of attorney authorizing it to collect payments by the government on the contract, on the faith of which the bank made loans to the company, effectuated a valid equitable assignment of the contracts.

[Ed. Note.—For other cases, see Assignments, Cent. Dig. § 106; Dec. Dig. § 51.* 1 Va.-W. Va. Enc. Dig. 762, et seq.]

2. Assignments (§ 68*)—Validity—Claim against Federal Government.—Rev. St. U. S. § 3477 (U. S. Comp. St. 1901, p. 2320), making all assignments of any claim upon the United States null and void,

*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.

unless executed in the presence of two attesting witnesses after the allowance of the claim, ascertainment of the amount due and issuance of a warrant for payment, and acknowledged as provided therein, was enacted to protect the government, and not the parties to the assignment, so that an assignment of shipbuilding contracts with the federal government, with power to collect the payments to become due thereunder, being valid between the parties, was not made invalid by the statute, where the government voluntarily deposited the money in court to be disposed of by the parties upon completion of the contracts.

[Ed. Note.—For other cases, see Assignments, Dec. Dig. § 68.* 1 Va.-W. Va. Enc. Dig. 762, et seq.]

3. Maritime Liens (§ 37*)—Priority—Equitable Assignments.—An assignment to a bank by a shipbuilding company of its contracts for building vessels, with a power of attorney to collect payments made under the contract, in consideration of money which was used by the shipbuilding company to carry on its business, was superior to subsequently accruing liens for labor and supplies used in building the vessels.

[Ed. Note.—For other cases, see Maritime Liens, Cent. Dig. § 58; Dec. Dig. § 37.* 1 Va.-W. Va. Enc. Dig. 770, et seq.; 9 id. 332, 333.]

4. Judgment (§ 713*)—Res Judicata.—A holding as to the status of a corporation and as to the constitutionality of a statute, in a former suit to which the parties to the present suit were parties, is res judicata.

[Ed. Note.—For other cases, see Judgment, Cent. Dig. §§ 1234-1241; Dec. Dig. § 713.* 6 Va.-W. Va. Enc. Dig. 283, et seq.]

5. Shipping (§ 24*)—Sale of Vessel—Delivery—Passing of Title.—A contract between a shipbuilding company and the United States government, for the building of a vessel, provided that all materials and work were to be inspected by the government, whose decision was final, and authorized the cancellation of the contract if the contractor failed to begin or prosecute the work according to specifications, when all payments were to cease, and the reserved percentage of the payments should be retained until the completion of the vessels at the expense of the contractor; the government to have the right to proceed under Rev. St. U. S. § 3709 (U. S. Comp. St. 1901, p. 2484), for its completion by contract or purchase, and to recover any payments in excess of the original contract price. The contractor was required to assume all liability for labor and materials until final acceptance of the vessel, and it was agreed that no prior inspection, payment, or act of the government should be construed as a waiver of the right to reject defective materials or work. Payments were to be in installments during construction, final payment to be made when the

*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.

vessel was turned over to the government, but 20 per cent. of the installments was to be reserved until final payment, and the specifications, which were made a part of the contract, provided that their purpose was to deliver a vessel complete in every respect, and that the company was to assume liability for injury to employees, materials, etc., during construction, remedy all defects etc., and specifically provided that all parts paid for by the installments shall thereby become the sole property of the United States, but that such provision should not relieve the contractors from any provisions of the specifications or from sole responsibility of the protection of the parts of the vessel prior to delivery. The contract further provided for insurance in favor of the government at the contractor's cost to at least the amount of each partial payment, and required the conductor to give bond for the full performance of all the covenants and the prompt payment for labor and materials. Held, that the ownership of the vessel remained in the contractor; the government having, at most, a lien for money advanced.

[Ed. Note.—For other cases, see Shipping, Dec. Dig. § 24.* 12 Va.-W. Va. Enc. Dig. 18; 14 id. (Supt.) 910-11.]

6. Maritime Liens (§ 38*)—Priority—Contract Liens.—Under Code 1887, § 2485, as amended by Act 1891-92, p. 362, c. 224 (Code 1904, p. 1246), giving all persons furnishing supplies to a manufacturing company necessary to its operation a prior lien upon the personal property of the company, except its plant, to the extent of the money due for such supplies, liens for supplies and materials furnished in the construction of a vessel under contract with the government, which attached before the government took possession, were superior to its rights or liens under the contract, even if title to the parts of the vessel completed, for which part payment had been made, had passed to the government, since it passed subject to liens and incumbrances.

[Ed. Note.—For other cases, see Maritime Liens, Dec. Dig. § 38.* 9 Va.-W. Va. Enc. Dig. 332, et seq.; 14 id. (Supt.) 654.]

7. Contracts (§ 144*)—What Law Governs.—Contracts are considered as made with reference to existing laws, by which their performance is to be enforced.

[Ed. Note.—For other cases, see Contracts, Cent. Dig. §§ 724-727; Dec. § 144.* 3 Va.-W. Va. Enc. Dig. 106.]

8. United States (§ 55*)—Property—Transfers.—The extent of the rights of the United States government in property transferred to it is determined by the rights of its grantor, so that the government would take title to a ship transferred to it during construction subject to superior liens for supplies.

[Ed. Note.—For other cases, see United States, Cent. Dig. § 38; Dec. Dig. § 55.* 13 Va.-W. Va. Enc. Dig. 405; 14 id. (Supt.) 1041.]

*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.

9. United States (§ 70*)—Contracts—Construction.—The rule of construction of a contract between the United States and a citizen or a corporation for building a ship is the same as in case of a contract between citizens, so that the government in such case contracts with reference to the laws in force in the jurisdiction where the contract is made.

[Ed. Note.—For other cases, see United States, Dec. Dig. § 70.* 13 Va.-W. Va. Enc. Dig. 405; 14 id. (Supt.) 1041.]

10. Contracts (§ 175*)—Construction—Intention of Party.—The opinion of an officer of the construction company engaged in building a ship, as to whether the vessel under the contract became the property of the buyer, even if admissible, could have no weight in construing the contract.

[Ed. Note.—For other cases, see Contracts, Cent. Dig. § 766; Dec. Dig. § 175.* 5 Va.-W. Va. Enc. Dig. 798.]

11. United States (§ 125*)—Actions—Right of Action—Consent—Effect.—Where the United States government voluntarily submitted its rights under a contract to the determination of the state courts, the theory that a sovereign cannot be sued without its consent has no application.

[Ed. Note.—For other cases, see United States, Cent. Dig. §§ 113, 114; Dec. Dig. § 125.* 13 Va.-W. Va. Enc. Dig. 406.]

12. Sales (§ 214*)—Performance of Contract—Title of Power—Intention of Party.—The intent of the parties is the general rule for determining whether title passes to the buyer under a contract for the construction of an article by which part payments are to be made during the course of construction.

[Ed. Note.—For other cases, see Sales, Cent. Dig. §§ 571-573; Dec. Dig. § 214.* 12 Va.-W. Va. Enc. Dig. 15.]

13. Sales (§ 214*)—Passing of Title.—The general rule is that title to a chattel which is being constructed does not pass to the buyer until it is completed and delivered.

[Ed. Note.—For other cases, see Sales, Cent. Dig. §§ 571-573; Dec. Dig. § 214.* 12 Va.-W. Va. Enc. Dig. 15, et seq.]

14. Maritime Liens (§ 38*)—Priority—Contract Lien.—A contract between a shipbuilding company and the Secretary of the Treasury of the United States provided that the vessel was to be delivered complete, and should be subject to inspection by government officers during construction, with power to reject materials used, that the government might complete the vessel at the contractor's cost if it failed to do so, that it should be insured for the government's benefit, that the government should pay for the vessel when fully completed and pronounced satisfactory, and the Secretary of the Treasury might, in

*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.

his discretion, make payments during construction, not to exceed 75 per cent. of the value of the labor and materials actually furnished, and provided that a lien should be retained by the United States upon the hull and equipment of the vessel for all money advanced; such lien commencing with the first payment and attaching to the work done from time to time until completion and acceptance. The contractor was also required to give bond for its construction according to specifications and for prompt payment for labor, materials, etc. Code 1887, § 2485, as amended by Acts 1891-92, p. 362, c. 224 (Code 1904, p. 1246), gives all persons furnishing supplies to a manufacturing company necessary to its operation a prior lien upon the personal property of the company, except its plant, for money due for such supplies, and also a lien on its realty and personalty, which, however, is inferior to any lien by trust deed, etc., duly recorded before the supplies were furnished. Held, that the contract was made with reference to the statutory lien for labor and supplies, and such lien was superior to that retained by the government in the contract.

[Ed. Note.—For other cases, see Maritime Liens, Dec. Dig. § 38.* 9 Va.-W. Va. Enc. Dig. 332, et seq.]

15. Statutes (§ 229*)—"Joint Resolution."—An act of Congress governs all persons under the jurisdiction of the enacting power; whereas, a "joint resolution" is merely a rule for the guidance of the agents and servants of the government.

[Ed. Note.—For other cases, see Statutes, Dec. Dig. § 229.*]

16. Maritime Liens (§ 38*)—Priority—Contract Lien.—A contract between a shipbuilding company and the United States government for the construction of a vessel gave the government a lien on the vessel for any installment of the price paid during construction, provided for the release of all liens before any payments could be required, and that, if it declared the contract forfeited for failure to prosecute the work, the lien retained should be collateral security for the refund of such installments. Code 1887, § 2485, as amended by Acts 1891-92, p. 362, c. 224 (Code 1904, p. 1246), gives all persons furnishing supplies to a manufacturing company for its operation a prior lien therefor upon its personal property, other than its plant, and a lien upon its realty and personalty, which, however, is inferior to any duly recorded lien by trust deed, etc. Held, that title to the vessel remained in the contractor; the government only having a lien thereon as collateral security for installments paid, which was inferior to liens for material and supplies furnished in its construction.

[Ed. Note.—For other cases, see Maritime Liens, Dec. Dig. § 38.* 9 Va.-W. Va. Enc. Dig. 332, et seq.]

17. Maritime Liens (§ 38*)—Priority—Contract Lien.—A contract for the construction of a vessel for a railroad company provided that

*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.

the contractor should furnish all materials and the company should pay for the work and materials furnished after inspection, in 10 payments, as the work progressed, that its inspectors should inspect the work and materials with power to reject, that the contractor should procure releases from all liens for materials, etc., and should protect it against injuries, etc., during construction, and indemnify it from all penalties for violating ordinances, statutes, etc., and should insure in favor of the company against damage by fire to an amount equal to the payments advanced to it, and that the company could reject the vessel upon final inspection; but there was no provision reserving a lien for partial payments made by the company, or attempt to pass title to the extent of the payments made. Held, that title to the vessel remained in the contractor and did not pass, even though the contract referred to the company as "owners" and was subject to liens for supplies furnished in its construction, under Code 1887, § 2485, as amended by Acts 1891-92, p. 362, c. 224 (Code 1904, p. 1246), giving all persons furnishing supplies to a manufacturing company for its operation a prior lien on its personalty, other than its plant, so that the purchase money of the boat, which was sold before completion, was first subject to such liens.

[Ed. Note.—For other cases, see Maritime Liens, Dec. Dig. § 38.* 9 Va.-W. Va. Enc. Dig. 332, et seq.; 12 id. 15.]

18. Contracts (§ 170*)—Construction—Construction of Parties.—Since a contract for the construction of a boat was necessarily made with reference to the statutory right of builder's creditors to liens, the construction of the contract by the parties as to priority and validity of liens, etc., was immaterial.

[Ed. Note.—For other cases, see Contracts, Cent. Dig. § 753; Dec. Dig. § 170.* 3 Va.-W. Va. Enc. Dig. 401, et seq.]

19. Maritime Liens (§ 37*)—Time Lien Attaches.—A lien for supplies furnished for the construction of a vessel attaches from the time the supplies were furnished.

[Ed. Note.—For other cases, see Maritime Liens, Dec. Dig. § 37.*]

Judgment reversed and remanded. Buchanan and Harrison, JJ., dissenting in part.

ROSELLE v. COMMONWEALTH.

Sept. 16, 1909.

[65 S. E. 526.]

1. Criminal Law (§ 447*)—Evidence—Parol Evidence.—The rule against contradicting a written instrument by parol does not apply to controversies between the parties to the writing and third persons, so that, in a prosecution of accused for peddling picture frames with—

*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.